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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

JANE DOE, an individual,

Plaintiff,

vs.

BLACKBERRY CORPORATION; a Delaware Corporation; and JOHN GIAMATTEO; an individual,

Defendants.

Case No. 3:24-cv-02002

MOTION TO DISMISS PLAINTIFF'S COMPLAINT IN PART AND MOTION TO STRIKE

Hearing Date:	July 1, 2024
Time:	9:30 AM
Place:	Courtroom C
Judge:	Sallie Kim

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

FEDERAL CASES

STATE CASES

STATE STATUTES

FEDERAL RULES

OTHER AUTHORITIES

PLEASE TAKE NOTICE that on July 1, 2024, at 9:30 AM, or as soon thereafter as this Motion may be heard, before the Honorable Sallie Kim in Courtroom C, Defendants BLACKBERRY CORPORATION and JOHN GIAMATTEO will and hereby do move for an order dismissing Plaintiff's complaint in part and striking Plaintiff's complaint in part. This Motion is based on the Notice of Motion and Memorandum of Points and Authorities, all papers on file, and any authority or argument presented in the reply and at any hearing.

STATEMENT OF RELIEF SOUGHT

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendants seek dismissal of Plaintiff's second cause of action (for alleged discrimination in payment of wages in violation of Cal. Lab. Code § 1197.5), third cause of action (for alleged hostile work environment in violation of California's Fair Employment and Housing Act ("FEHA")), and seventh cause of action (for failure to promptly pay wages in violation of Cal. Lab. Code § 201). Defendants also seek an order striking, pursuant to Federal Rule of Civil Procedure 12(f), all references to the hiring or training of Defendant John Giamatteo and all references to "harassment" and "discrimination" in Plaintiff's fourth cause of action (for failure to prevent harassment and retaliation in violation of FEHA).

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In October 2023, Defendant BlackBerry announced a radical change to its corporate structure. Approximately a decade prior, the company had been a global leader in smartphones with more than 17,000 employees worldwide, but in recent years BlackBerry had exited the cellphone market, contracted to around 3,000 employees, and focused primarily on two lines of products: Cybersecurity (software that guards against cyber attacks) and Internet of Things (foundational software in cars and other connected systems). After months of consideration by the Board and consultation with advisors Morgan Stanley and Perella Weinberg Partners, BlackBerry announced in October 2023 that it would effectively split the company by creating two standalone

businesses, with a goal of pursuing a subsidiary initial public offering for the Internet of Things ("IoT") business by September 2024.[1]

As part of the split, BlackBerry laid off more than 200 employees,[2] including three members of its executive team. One of the three was Plaintiff Jane Doe, who held a unique position at BlackBerry that had been created for her by the company's former Executive Chairman and CEO, John Chen, who announced his retirement in October 2023. Plaintiff's position did not fit into either the standalone Cybersecurity business or the standalone IoT business, and she was a poor fit to be placed in a new or different role because she had engaged in a long-term pattern of antagonistic and demeaning conduct toward colleagues, leading to a negative and toxic culture that surrounded her. For example, in the two months prior to Plaintiff being let go, a female employee who reported to Plaintiff took medical leave to address mental health issues caused by Plaintiff's abusive behavior, and another employee on Plaintiff's team quit on the spot when Plaintiff insisted he work around the clock on a weekend to complete a project on an unrealistic timeline. Although a favorite of John Chen, who sponsored her rapid rise, Plaintiff alienated virtually all of her peers through years of rude and divisive conduct.

In light of the elimination of Plaintiff's position and her habitual mistreatment of her coworkers, BlackBerry decided to let Plaintiff go rather than find another place for her in the

[1] Press Release, Blackberry, BlackBerry Provides Project Imperium Update and Announces Intention to Separate Business Units (Oct. 4, 2023), https://www.blackberry.com/us/en/company/newsroom/press-releases/2023/blackberry-provides-project-imperium-update-and-announces-intention-to-separate-business-units; Stephanie Hughes, et al., *BlackBerry Will Spin Off Internet of Things Business, Aims to Unlock Value 'Being Masked' by Other Struggles*, FORTUNE (Oct. 5, 2023, 1:47 PM), https://fortune.com/2023/10/05/blackberry-to-spin-off-internet-of-things-business-ipo/.

[2] Press Release, Blackberry, BlackBerry Provides Update on Progress in Separation of Divisions and Path to Profitability (Feb. 12, 2024), https://www.blackberry.com/us/en/company/newsroom/press-releases/2024/blackberry-provides-update-on-progress-in-separation-of-divisions-and-path-to-profitability (approximately 200 headcount reductions in fourth fiscal quarter, with additional headcount reductions to follow); Akash Sriram, *Canada's BlackBerry to Lay Off More Staff in Cost-Cutting Drive*, REUTERS (Feb. 12, 2024), https://www.reuters.com/business/world-at-work/canadas-blackberry-lay-off-more-staff-cost-cutting-drive-2024-02-13/.

company. Although BlackBerry offered her the option to resign, she declined, and was terminated in December 2023. Complaint ¶ 65 (hereinafter "¶ _").

In this lawsuit, Plaintiff brings eight claims against BlackBerry for retaliation, wrongful termination, failure to pay wages promptly, and other causes of action. Plaintiff also brings two claims—hostile work environment based on sex and discriminatory failure to pay wages—against both BlackBerry and its current CEO, John Giamatteo, in his personal capacity. While none of Plaintiff's claims have merit, her claims for hostile work environment, discriminatory pay, and failure to pay wages promptly fail at the outset because she has failed to plead facts that state a claim for relief.

First, Plaintiff's claim of a hostile work environment fails because her allegations come nowhere close to pleading the "pervasive" or "severe" conduct required to state a claim for sexual harassment. Plaintiff alleges only three incidents of inappropriate conduct: (i) alleged remarks by Giamatteo about travelling with Plaintiff for work; (ii) a dinner where Giamatteo was allegedly "overly friendly," but made no physical contact or inappropriate statements; and (iii) an alleged self-deprecating joke by Giamatteo that, when out in public with his daughters, people think he is on a date with them and that he is a "dirty old man." These allegations are filled with falsehoods and mischaracterizations, but even if they were true, such isolated incidents are not "severe enough or sufficiently pervasive to alter the conditions of [Plaintiff's] employment and create a work environment that qualifies as hostile or abusive to [Plaintiff] because of [her] sex." *Hughes v. Pair*, 46 Cal. 4th 1035, 1043 (2009).

In the seminal case on sex-based hostile work environment claims, *Hughes v. Pair*, the California Supreme Court held that conduct dramatically more egregious than what Plaintiff alleges did *not* suffice to show pervasive or severe harassment. *Id.* at 1040 (finding that defendant's numerous sexual remarks to plaintiff, including that he would "get [her] on [her] knees eventually" and "fuck [her] one way or another," did not establish a hostile environment). Consistent with this precedent, lower courts have routinely rejected claims of a sexually hostile work environment in cases with far more serious allegations. *See, e.g.*, *Haberman v. Cengage Learning, Inc.*, 180 Cal. App. 4th 365, 383–84 (2009) (numerous sexual jokes, remarks about

plaintiff's appearance, and explicit discussions of sex with plaintiff were insufficient to show pervasive or severe harassment).

Second, Plaintiff's discriminatory pay claim against John Giamatteo and BlackBerry fails because Giamatteo is an improper defendant and Plaintiff does not plead basic, essential facts, such as her pay, title, role, experience, or responsibilities. The California Labor Code creates liability only for *employers*, not for individual employees like Giamatteo, so Plaintiff's discriminatory pay claim against Giamatteo must be dismissed. *See* Cal. Lab. Code § 1197.5 (providing that "[a]n employer" shall not engage in discriminatory pay). Plaintiff's claim against BlackBerry itself also fails because, although she alleges being paid less than Giamatteo when he was President of BlackBerry's Cybersecurity division, she does not allege anything to establish that the two of them performed substantially similar work. Quite the opposite, Plaintiff admits she had a "significantly smaller team than Giamatteo had supporting him." ¶ 25.

Third, Plaintiff fails to state a claim for failure to pay wages promptly under California Labor Code Sections 201 and 203. Much like for her discriminatory pay claim, Plaintiff asserts only a bare, conclusory allegation that BlackBerry failed to pay wages she was owed at the time of her termination. ¶ 136. Plaintiff makes "no factual allegations concerning 'when [s]he received h[er] final paycheck, its amount, and the amount [s]he purportedly should have received,'" and her claim should be dismissed. *See Jacobs v. Sustainability Partners LLC*, No. 20-cv-01981-PJH, 2020 WL 5593200, at *12 (N.D. Cal. Sept. 18, 2020) (citation omitted) (dismissing claims under §§ 201 and 203).

In addition to dismissing certain claims in their entirety, the Court should strike subparts of two other claims that advance theories of liability Plaintiff has not properly pled. Specifically, the Court should strike Plaintiff's allegations regarding the *hiring* of John Giamatteo from Plaintiff's claim for negligent hiring, firing, and retention, because any negligent hiring theory is barred by the two-year statute of limitations. The Court should also strike Plaintiff's allegations regarding *harassment* and *discrimination* from Plaintiff's claim that BlackBerry failed to prevent harassment, discrimination, and retaliation, because Plaintiff has not plausibly pled a single

instance of harassment or discrimination. Striking these improper portions of Plaintiff's claims is important to prevent unwarranted, expansive discovery that will delay resolution of this case.

II. SUMMARY OF ALLEGATIONS

Defendant BlackBerry Corporation[3] ("BlackBerry") is one of the foremost cybersecurity companies in the world, providing critical products and services to help businesses, government agencies, and other safety-critical institutions secure their networks. As a leader in the technology sector, BlackBerry has shown a commitment to fostering a "diverse employee community [that] is built on integrity, innovation, accountability, and respect," and to improving opportunities and outcomes for women and other underrepresented populations working in tech. ¶¶ 13–14.

Plaintiff Jane Doe is a former BlackBerry employee. ¶ 15. Throughout her tenure at BlackBerry, Plaintiff alleges that her white male coworkers "continuously made it difficult for [her] to complete her job and created a hostile work environment for her." ¶ 19. Nonetheless, Plaintiff rapidly rose through the ranks and obtained a position on BlackBerry's executive leadership team. ¶¶ 1, 18. Plaintiff acknowledges that she believed her career was supported by two of the highest-ranking executives at BlackBerry: the former Executive Chairman and CEO, John Chen, and the former Chief Human Resources Officer, Nita White-Ivy. ¶ 21.

A. Sexual Harassment Allegations

In October 2021, BlackBerry hired Defendant John Giamatteo to serve as President of the Cybersecurity line of business ("Cyber Unit"). ¶ 24. Plaintiff was leading a separate function from Giamatteo outside of the Cyber Unit. ¶¶ 36, 40 (noting that Plaintiff and Giamatteo worked on separate teams). Across more than two years of working together—from October 2021 to December 2023—Plaintiff characterizes three incidents involving Giamatteo as sexual harassment.

Plaintiff first alleges that Giamatteo asked Plaintiff to begin reporting to him on the rationale that it would allow them to travel together. ¶ 27. According to Plaintiff, she "politely

[3] BlackBerry Corporation is the principal United States subsidiary of BlackBerry Limited, a public company based in Ontario, Canada. For purposes of this motion, Defendants refer to both BlackBerry Corporation and BlackBerry Limited as "BlackBerry."

rejected" this request and explained to Giamatteo that she was not interested in changing her reporting structure. *Id.*

Plaintiff's second allegation concerns a single after-work dinner she had with Giamatteo. Plaintiff alleges that Giamatteo was "overly friendly," treated the dinner like a "date," and attempted to "woo" and "get close" to her, such that it "did not come off as a professional dinner." ¶¶ 28–29. Plaintiff does not describe any statements made by Giamatteo at the dinner or specify how he tried to "get close" to her, nor does she allege any physical contact with Giamatteo at the dinner or at any other time. ¶ 29.

Plaintiff's third allegation is that, at an unspecified time, Giamatteo talked about his daughters, their age, and how they dressed, and joked that people think he is a "on a date" and a "dirty old man" when they go out together. ¶ 30.

Plaintiff alleges that she discussed Giamatteo's conduct with the company's then-CEO, John Chen, and asked him to assure her that she would not have to travel alone with Giamatteo, to which Chen allegedly agreed. ¶ 32.

B. Retaliation Allegations

Plaintiff alleges that Giamatteo began retaliating against her after she reported his conduct to Chen. ¶ 34. Among these allegations, Plaintiff claims that Giamatteo stopped inviting her to meetings, asked her to do presentations for him at meetings, failed to treat her as an executive, and took credit for her work. ¶ 34.

The complaint further alleges that, in early 2022, Plaintiff reported to human resources that Giamatteo or his subordinates submitted an organizational chart to Plaintiff's customers that incorrectly showed her as reporting to Giamatteo. ¶¶ 36–37. BlackBerry investigated and concluded that the chart was factually incorrect, but that Plaintiff had not been treated differently based on her gender. ¶ 38. Plaintiff also alleges that she reported Giamatteo to human resources in early 2023 for alleged acts of retaliation, but not for any alleged sexual harassment. ¶¶ 43, 54.

Plaintiff alleges that on November 30, 2023, she received an email to schedule a one-on-one meeting with BlackBerry's Interim CEO, Dick Lynch. ¶ 64. When the one-on-one meeting

occurred on December 4, 2023, Lynch informed Plaintiff that she was being terminated from BlackBerry due to the company's restructuring. ¶ 65.

III. LEGAL STANDARD

To survive a Rule 12(b)(6) motion to dismiss, a complaint "must contain sufficient factual matter . . . to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted). This standard requires more than simply pleading "labels and conclusions," and a "formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Although the Court accepts all allegations of material fact as true, *Faulkner v. ADT Sec. Servs., Inc.*, 706 F.3d 1017, 1019 (9th Cir. 2013), it does not "accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). Plaintiffs may not rely on "anticipated discovery to satisfy" their pleading obligations; "rather, pleadings must assert well-pleaded factual allegations to advance to discovery." *Whitaker v. Tesla Motors, Inc.*, 985 F.3d 1173, 1177 (9th Cir. 2021).

Motions to strike are governed by Rule 12(f), which states that a court may strike from a pleading "redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12. "A Rule 12(f) motion to strike serves to avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial." *Snap! Mobile, Inc. v. Croghan*, No. 18-CV-04686-LHK, 2019 WL 884177, at *3 (N.D. Cal. Feb. 22, 2019) (internal quotation marks omitted).

IV. ARGUMENT

A. Plaintiff's Hostile Work Environment Claim Should Be Dismissed.

Plaintiff's allegations fall far short of pleading the "pervasive" or "severe" conduct necessary to pursue a claim of hostile work environment based on sex. Under FEHA, such a claim requires a plaintiff to show that she was "subjected to sexual advances, conduct, or comments that were (1) unwelcome; (2) because of sex; and (3) sufficiently severe or pervasive to alter the conditions of her employment and create an abusive work environment." *Lyle v. Warner Bros. Television Prods.*, 38 Cal. 4th 264, 278–79 (2006) (citations omitted). Plaintiff's allegations do

not satisfy this standard. Despite a litany of critiques about Giamatteo's character and conduct, Plaintiff does not allege that he made physical contact with her, used explicit or vulgar language, remarked on her appearance, propositioned her, or asked her out. Instead, Plaintiff's harassment claim boils down to three alleged incidents across more than two years, none of which were severe even by Plaintiff's generalized, unspecific account. Plaintiff's remaining allegations about workplace slights by Giamatteo—such as failing to invite her to meetings—cannot plausibly be alleged as motivated by Plaintiff's sex and therefore provide no support for her sexual harassment claim. Plaintiff's hostile work environment claim should be dismissed.

1. Plaintiff Fails to Allege Pervasive or Severe Harassment That Altered the Conditions of Her Employment.

In construing FEHA, the California Supreme Court has held that "the hostile work environment form of sexual harassment is actionable only when the harassing behavior is *pervasive* or *severe.*" *Hughes*, 46 Cal. 4th at 1043 (emphasis in original). Accordingly, "an[] employee claiming harassment based upon a hostile work environment must demonstrate that the conduct complained of was *severe enough* or *sufficiently pervasive* to alter the conditions of employment and create a work environment that qualifies as hostile or abusive to employees *because of their sex*." *Lyle*, 38 Cal. 4th at 278–79 (emphasis in original). "There is no recovery for harassment that is occasional, isolated, sporadic, or trivial." *Hughes*, 46 Cal. 4th at 1043 (internal quotation marks omitted).

Hughes v. Pair is instructive. 46 Cal. 4th 1035. In *Hughes*, the plaintiff alleged having a phone call with the defendant in which he called her "sweetie" and "honey" while making a string of sexual remarks, including that he thought of plaintiff "in a special way, if you know what I mean"; that "everyone always had a thing for [her]"; that plaintiff was "one of the most beautiful, unattainable women in the world"; and that plaintiff should call his home phone number when she was "ready to give [him] what [he] want[ed]." *Id.* at 1040. The defendant further said he would make decisions in plaintiff's favor if she was "nice" to him and, when plaintiff said his comments were crazy, responded: "How crazy do you want to get?" *Id.* Later that same day, the defendant

saw plaintiff and told her: "I'll get you on your knees eventually. I'm going to fuck you one way or another." *Id.*

The California Supreme Court held that this conduct was neither pervasive nor severe and could not establish a sexual harassment claim. "To be *pervasive*," the Supreme Court explained, "the sexually harassing conduct must consist of 'more than a few isolated incidents.'" *Id.* at 1048 (emphasis in original) (citation omitted). The Court then concluded that the defendant's comments on the phone call, combined with the in-person encounter, did not qualify as pervasive. *Id.* The Court further held that, despite being "vulgar and highly offensive," the comment about getting plaintiff "on [her] knees" did not constitute "severe" harassing conduct. *Id.* at 1049.

Another informative comparison is *Haberman v. Cengage Learning, Inc.*, 180 Cal. App. 4th 365 (2009), in which the California Court of Appeal affirmed summary judgment for an employer on a hostile environment claim based on thirteen alleged incidents of harassment. Among other things, the plaintiff alleged that her male coworker joked in her presence about the size of his penis; remarked that she was "pretty" and "'drop dead' gorgeous"; told her on the phone while trailing her in his car that he was "coming right up behind her and it felt pretty good"; expressed interest in casual sex and asked on two occasions whether plaintiff had any friends who just wanted to have sex; and asked plaintiff how she knew whether someone was "good in bed." *Id.* at 383–84.

The Court of Appeal held that these "brief and isolated comments" over a two- to three-year period "did not establish conduct sufficiently severe or pervasive as to alter [plaintiff's] conditions of employment and create a work environment that qualifies as hostile or abusive to [plaintiff] based on sex." *Id.* at 385–86. The court noted that none of the allegations involved physical contact or explicit language, and the male coworker did not proposition plaintiff or ask her out on a date. *Id.* at 385.

In 2018, the California legislature amended FEHA to clarify aspects of the standard for sexual harassment. The amendment did not change the requirement that a plaintiff must allege conduct that is pervasive or severe but instructed courts not to rely on a particular Ninth Circuit decision "in determining what kind of conduct is sufficiently severe or pervasive to constitute a

violation of the California Fair Employment and Housing Act." Cal. Gov't Code § 12923(b). The amendment also provided that a "single incident of harassing conduct is sufficient to create a triable issue regarding the existence of a hostile work environment" if the conduct "unreasonably interfered with the plaintiff's work performance or created an intimidating, hostile, or offensive working environment." *Id.* § 12923(a).

While the amendment expressly embraced the holdings of courts in two specified cases and rejected the holdings in two others, it did not disrupt or comment on *Lyle*, *Hughes*, or *Haberman*. Those cases remain good law, and courts continue to rely on them to determine whether plaintiffs have pled conduct that is sufficiently pervasive or severe to constitute a sexually hostile work environment. *See, e.g.*, *Perez v. United Parcel Serv., Inc.*, No. 21-16538, 2022 WL 3681297, at *4 (9th Cir. Aug. 25, 2022) (applying *Lyle* in affirming summary judgment for defendant where "no reasonable jury could find [defendant's] alleged harassment was sufficiently severe or pervasive to be actionable"); *Graves v. DJO, LLC*, No. 20-CV-1103 W (KSC), 2023 WL 3565077, at *17 (S.D. Cal. Mar. 30, 2023) (citing *Lyle* as the standard governing sexually hostile environment claims and granting summary judgment to defendant); *Noble v. Dorcy Inc.*, No. 2:19-cv-08646-ODW (JPRx), 2020 WL 4227295, at *4 (C.D. Cal. July 23, 2020) (citing *Lyle* and dismissing plaintiff's claim at the pleading stage for failure to allege sufficiently severe or pervasive conduct); *Tonoyan v. W. Refin. Retail, LLC*, No. 2:19-cv-08728-AB (ASx), 2020 WL 13132899, at *2 (C.D. Cal. Feb. 5, 2020) (citing *Haberman* and *Hughes* and dismissing plaintiff's sexual harassment claim at the pleading stage because he alleged "only isolated and sporadic off-hand comments by his coworkers"); *Godina v. Wells Fargo Bank, N.A.*, No. 5:18-cv-02641-RGK-KK, 2019 WL 7882370, at *5 (C.D. Cal. Nov. 22, 2019) (citing *Hughes* and granting summary judgment to defendant where plaintiff failed to show pervasive or severe conduct).

Here, Plaintiff has clearly failed to plead pervasive or severe harassment. As for pervasiveness, Plaintiff alleges only three incidents across more than two years, and one of them—an alleged self-deprecating joke by Giamatteo about being seen as a "dirty old man" when out in public with his daughters—does not qualify as a comment made "because of" Plaintiff's sex. *See Haberman*, 180 Cal. App. 4th at 384 (male employee's comment to customer that female plaintiff

"had five children with no father in the picture" was "not based on sex" and "not sexual in nature"). But even if the alleged joke were part of the equation, Plaintiff's allegations could not meet the standard for pervasiveness. Applying *Haberman*, where the Court of Appeal held that *eleven* instances of improper conduct (including several far more severe and explicit than anything alleged against Giamatteo) over a three- to four-year period were not pervasive, Plaintiff cannot possibly be said to have pled facts that constitute pervasive harassment. Rather, the three incidents alleged by Plaintiff are the type of "occasional, isolated, sporadic, or trivial" conduct that is non-actionable under FEHA. *See id.* at 385. Indeed, another district court in California recently concluded that "three alleged acts of harassment" over a 13-month period fell far short of establishing "a pattern of continuous, pervasive harassment." *Graves*, 2023 WL 3565077, at *17.

Plaintiff has also failed to allege any harassment that was severe. For example, Plaintiff's allegations that Giamatteo suggested traveling together and joked about being perceived as a "dirty old man" are far more innocuous than comments the California Supreme Court held insufficiently severe to support a hostile environment claim in *Hughes* ("I'm going to fuck you one way or another") or remarks that numerous other courts have rejected as a basis for a hostile environment claim. *See, e.g.*, *McCoy v. Pac. Mar. Ass'n*, 216 Cal. App. 4th 283, 293 (2013) (insufficient severity for hostile environment claim where employee made crude gestures toward female coworkers and commented about their bodies, such as that one had a "J–Lo ass"); *Haley v. Cohen & Steers Cap. Mgmt., Inc.*, 871 F. Supp. 2d 944, 957 (N.D. Cal. 2012) (same where male employee asked plaintiff about her "break up sex" and whether it had been "hard enough to knock the attitude out of her"); *Kortan v. Cal. Youth Auth.*, 217 F.3d 1107 (9th Cir. 2000) (same where supervisor described former female employees using terms like "madonna" and "castrating bitch").

What's more, even by Plaintiff's telling, Giamatteo's alleged joke about being out in public with his daughters did not mention or refer to Plaintiff in any way, and the California Supreme Court has established an even higher bar for such "non-directed" conduct to qualify as harassment. *See Lyle*, 38 Cal. 4th at 284 ("[C]onduct that involves or is aimed at persons other than the plaintiff is considered less offensive and severe than conduct that is directed at the

plaintiff."). Applying this standard, Giamatteo's alleged joke is even less severe or offensive because it neither involved nor was aimed at Plaintiff. *See id.* at 287 (rejecting harassment claim where sexual antics and discussions "were not aimed at plaintiff or any other female employee"); *McCoy*, 216 Cal. App. 4th at 294 (rejecting claim where comments involved "discussion of other women's bodies outside their presence" and plaintiff "did not claim any sexual comment or conduct was directed at her").

Plaintiff's allegations are also devoid of specific facts, which are necessary to plead conduct that a reasonable person would view as severe. The complaint ambiguously alleges that Plaintiff's dinner with Giamatteo "did not come off as a professional dinner" because he was "overly friendly," "treated it as a 'date,'" and "tried to get close to her" (¶¶ 29, 31), but fails to specify a single statement Giamatteo made at the dinner or how, exactly, he attempted to "get close" to her. Indeed, it is unclear from the complaint whether Plaintiff accuses Giamatteo of trying to "get close" to her physically versus interpersonally. It is not sufficient for Plaintiff to plead merely her *subjective* experience. Rather, harassment must satisfy both a subjective *and objective* standard to be actionable under California law, with the "objective severity of harassment . . . judged from the perspective of a reasonable person in the plaintiff's position, considering 'all the circumstances.'" *Ortiz v. Dameron Hosp. Ass'n*, 37 Cal. App. 5th 568, 583 (2019) (citation omitted).

Plaintiff's conclusory allegations about how she interpreted conduct by Giamatteo, without supplying specific facts to permit the Court to evaluate how a reasonable person would have interpreted the conduct, fail to state a claim. *See Sprewell*, 266 F.3d at 988 (on a motion to dismiss, courts do not "accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences"); *Hatfield v. DaVita Healthcare Partners, Inc.*, No. C 13–5206 SBA, 2014 WL 2111237, at *6 (N.D. Cal. May 20, 2014) (dismissing FEHA claim where plaintiff made "vague and conclusory allegations of harassment"); *Peterson v. U.S. Bancorp Equip. Fin., Inc.*, No. C 10–0942 SBA, 2010 WL 2794359, at *3 (N.D. Cal. July 15, 2010) (dismissing hostile environment claim where plaintiff's allegations were "too vague and conclusory to state a claim for sexual harassment").

In sum, Plaintiff does not allege that Giamatteo made physical contact with her, used explicit language, propositioned her, or even asked her out on a date. *Haberman*, 180 Cal. App. 4th at 386. And even accepting as true that Plaintiff took exception to isolated comments or conduct by Giamatteo over a two-year period, FEHA is "not a 'civility code'" and "does not outlaw . . . conduct that merely offends." *Lyle*, 38 Cal. 4th at 295; *Doe v. Dep't of Corr. & Rehab.*, 43 Cal. App. 5th 721, 737 (2019) ("FEHA was not designed to make workplaces more collegial; its purpose is to eliminate more insidious behavior like discrimination and harassment based on protected characteristics."). Because Plaintiff has not adequately pled pervasive or severe conduct directed against her based on her sex, her hostile work environment claim must be dismissed.

2. Plaintiff's Remaining Allegations Are Not Sex- or Gender-Based and Do Not Support a Hostile Environment Claim.

Plaintiff alleges other conduct by Giamatteo, such as failing to invite her to meetings and making negative remarks about her work performance, that were not based on sex or gender and cannot support a claim for a sexually hostile work environment. ¶¶ 34–35. "The sine qua non of any sexual harassment claim is that the plaintiff suffered discrimination *because of sex*." *Kelley v. Conco Cos.*, 196 Cal. App. 4th 191, 203 (2011) (emphasis added). Hence, a plaintiff cannot sustain a hostile environment claim by making allegations about "behavior that is not sexual at all nor connected to sexual allegations." *See Washington v. Lowe's HIW Inc.*, 75 F. Supp. 3d 1240, 1251–52 (N.D. Cal. 2014). Because Plaintiff alleges ordinary workplace grievances against Giamatteo that bear no relationship to her sex or gender, they provide no support for her hostile work environment claim.

By Plaintiff's own account, Giamatteo allegedly began mistreating her at work because she complained about him to BlackBerry's former CEO—not because she is a woman or for any sexually-motivated purpose. ¶ 34. That distinction is exactly what separates retaliation claims from sexual harassment claims. The California Court of Appeal has recognized that acts of retaliation taken after a plaintiff reports a sexual harassment claim do not automatically constitute acts of harassment based on the plaintiff's sex. *Brennan v. Townsend & O'Leary Enters., Inc.*,

199 Cal. App. 4th 1336, 1360 (2011). Instead, a plaintiff must present evidence that any acts of retaliation were taken *because of* her gender. *See Lyle*, 38 Cal. 4th at 280 (plaintiff must plead facts showing that "gender is a substantial factor in the discrimination").

Similar to the allegations here, the plaintiff in *Brennan* claimed she was excluded from meetings and shunned in the workplace after reporting sexual harassment and that these retaliatory acts constituted further evidence of sexual harassment. 199 Cal. App. 4th at 1360. But the court rejected that argument in part because plaintiff had acknowledged "that such acts of supposed 'retaliation' were in response to her pursuing legal action against the agency, not because of her gender." *Id.* The same logic applies here. Because Plaintiff alleges only acts of retaliation which began as a response to her report to BlackBerry's former CEO and which are neither gender-based nor sexual in nature, her allegations provide no support for a sexual harassment claim against Giamatteo or the company.

The decision in *Haley* is instructive. 871 F. Supp. 2d at 957. The plaintiff in *Haley* brought a sexual harassment claim against her former employer, alleging that a supervisor harassed her by asking her if she had had "break up sex" with her boyfriend and if it had been "hard enough to knock the attitude out of her." *Id*. Plaintiff participated in a human resources investigation about the incident, after which her supervisor allegedly retaliated against her by humiliating her in group settings, threatening her with discipline, preventing her from transferring, taking away assignments, and denying her commissions. *Id.* The court ruled in favor of the employer on summary judgment. In addition to finding that the supervisor's alleged comments were not sufficiently severe to constitute gender-based harassment, the court also concluded that plaintiff could not rely on the supervisor's actions after the alleged sexual harassment, such as his "treatment of [her] on conference calls . . . and his decisions with respect to [her] transfer and commission decisions," because such conduct did not constitute "harassment with respect to plaintiff's gender." *Id.* at 958.

In light of the required nexus in sexual harassment claims between the alleged conduct and the plaintiff's sex or gender, courts routinely disregard allegations that are non-sexual and non-gendered when evaluating whether a plaintiff has stated a harassment claim. For example, the

plaintiff in *Haberman* accused her supervisor of saying he intended to bring his "guys" into the company, rejecting her travel reimbursement request, and placing her on a performance improvement plan. The court of appeal held these alleged acts "did not constitute conduct based on sex or of a sexual nature." *Haberman*, 180 Cal. App. 4th at 382. Similarly, the court in *Washington* dismissed plaintiff's claims because most of her allegations "involve[d] behavior that is not sexual at all nor connected to sexual allegations." *See Washington*, 75 F. Supp.3d at 1250–52 ("Most of her allegations are entirely non-sexual and non-discriminatory in nature, and amount to nothing more than ordinary workplace annoyances.").

This Court should likewise set aside allegations of non-sexual and non-gendered behavior in evaluating whether Plaintiff has pled a legally viable harassment claim. She has not, and her harassment claim should be dismissed.

B. Plaintiff's Claim for Pay Discrimination Should Be Dismissed.

Plaintiff has failed to state a claim that either Giamatteo or BlackBerry violated California's prohibition against discriminatory payment of wages based on sex. California Labor Code section 1197.5 provides that "[a]n *employer* shall not pay any of its employees at wage rates less than the rates paid to employees of the opposite sex for substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions." Cal. Lab. Code § 1197.5 (emphasis added). Because Giamatteo was Plaintiff's coworker, not her "employer," he cannot be personally liable for violations of section 1197.5, and Plaintiff's claim against him should be dismissed. Plaintiff has separately failed to plead any facts showing that she and Giamatteo performed "substantially similar work" under "similar working conditions." For this reason, Plaintiff's section 1197.5 claim against BlackBerry should also be dismissed.

1. Giamatteo Cannot Be Personally Liable for Alleged Pay Discrimination.

Section 1197.5 prohibits "employer[s]" from engaging in pay discrimination on the basis of sex. Cal. Lab. Code § 1197.5. By its plain language, the statute does not create a cause of action against an individual employee like Giamatteo. *People v. Toney*, 32 Cal. 4th 228, 232

(2004) (citation omitted) ("If the statutory language is unambiguous, '[the court] presumes the Legislature meant what it said.'"). Applying the statutory language, a court in the Northern District of California has likewise concluded that section 1197.5 claims may only be brought against employers, not individual employees. *See Jones v. Thyssenkrupp Elevator*, No. C-05-3539 EMC, 2005 WL 8177458, at *11 (N.D. Cal. Dec. 22, 2005) (dismissing a section 1197.5 claim against an individual supervisor and holding that there is "no ambiguity" in the statutory language).

Indeed, even if there were circumstances where an employee could be held liable for violating section 1197.5, Plaintiff has not alleged any facts to show that Giamatteo is liable here. Unlike the plaintiff in *Jones*, Plaintiff alleges that Giamatteo was a fellow executive and not her supervisor. ¶ 24; *see Jones*, 2005 WL 8177458, at *10 (holding that "individual supervisors who are not otherwise employers" cannot be liable under section 1197.5). Plaintiff also does not allege that Giamatteo had any role in setting her pay. There is no plausible basis on which he could be personally liable, and Plaintiff's claim against Giamatteo in his personal capacity should be dismissed without leave to amend.

2. Plaintiff Has Failed to Plead She Performed Substantially Similar Work to Giamatteo.

Plaintiff has also failed to state a section 1197.5 claim against BlackBerry because she does not plead facts showing that she and Giamatteo performed "substantially similar work" under "substantially similar working conditions." The complaint notes that Giamatteo was President of the Cyber Unit (¶ 24), but the complaint does not specify Plaintiff's title, role, or level of skill and experience, nor does it allege that she held a role equivalent to an officer of the company like Giamatteo. Rather, the complaint states that Plaintiff "held several positions in the executive team," maintained "executive level responsibility," and achieved "expanded success" based on financial metrics and customer and prospect engagement. ¶¶ 15, 18, 25. These general descriptions do not constitute "specific, factual allegations comparing the skill, effort, and responsibility required for the two positions." *Banawis-Olila v. World Courier Ground, Inc.*, No. 16-cv-00982-PJH, 2016 WL 4070133, at *3 (N.D. Cal. July 29, 2016) (internal quotation marks

omitted) (dismissing a plaintiff's section 1197.5 claim). To the contrary, the limited facts alleged in the complaint suggest that Plaintiff and Giamatteo occupied substantially different roles at BlackBerry, as Plaintiff admits that she had "a significantly smaller team" supporting her, as compared to Giamatteo. ¶ 25.

Plaintiff's section 1197.5 claim also fails because she names Giamatteo as the sole male comparator for her claim "without alleging facts to support such a limited comparison." *Davis v. Inmar, Inc*., No. 21-cv-03779 SBA, 2022 WL 3722122, at *5 (N.D. Cal. Aug. 29, 2022). In the context of the federal Equal Pay Act of 1963, which is nearly identical to the California statute, the Ninth Circuit has held that a plaintiff must provide multiple employees as comparators unless there are no other opposite-gender employees performing similar work. *See Hein v. Or. Coll. of Educ*., 718 F.2d 910, 918 (9th Cir. 1983). Indeed, the language of the federal Equal Pay Act and the California statute both require comparison to "employees" (plural) of the opposite sex, which allows the court to consider whether "plaintiff is receiving lower wages than the average of wages paid to *all* employees of the opposite sex." *Id.* at 916 (emphasis added). Plaintiff admits in her complaint that she had multiple male coworkers besides Giamatteo, and she further alleges that women were generally underrepresented at BlackBerry. ¶¶ 19, 14. Plaintiff's failure to compare herself to more than "a single other employee" is reason alone to dismiss her disparate pay claim. *See also Duke v. City Coll. of San Francisco*, No. 19-cv-06327-PJH, 2020 WL 512438, at *7 (N.D. Cal. Jan. 31, 2020) (dismissing a section 1197.5 claim because plaintiff provided only a single comparator).

Plaintiff also cannot sustain a section 1197.5 claim by making "conclusory allegation[s] parroting the statutory language." *Banawis-Olila*, 2016 WL 4070133, at *3. Yet that is exactly what Plaintiff has done. The complaint alleges that Plaintiff "was not paid a wage rate equal to Giamatteo, despite performing substantially similar work when viewed as a composite of skill, effort, and responsibility," and that "Giamatteo was similarly situated . . . yet he received substantially more pay, despite his poor performance." ¶¶ 86–87. These statements are "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements," which "do not suffice" to state a claim for relief. *Iqbal*, 556 U.S. at 678; *Werner v.*

Advance Newhouse P'ship, No. 1:13–cv–01259–LJO–JLT, 2013 WL 4487475, at *5 (E.D. Cal. Aug. 19, 2013) (allegation that different employees are "similarly situated" is a legal conclusion not entitled to the presumption of truth). Because Plaintiff has failed to plead adequate facts comparing similarities between her work and Giamatteo's work, her section 1197.5 claim against BlackBerry should be dismissed.

C. Plaintiff's Claim for Failure to Pay Wages Should Be Dismissed.

Plaintiff has failed to state a claim against BlackBerry for failure to pay wages promptly upon her termination. The relevant statute, California Labor Code section 201, provides that "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Cal. Lab. Code § 201(a). Another provision, California Labor Code section 203, provides a penalty for employers who "willfully fail[] to pay" wages under section 201. Cal. Labor Code § 203(a). Plaintiff alleges no facts to suggest she had wages earned and unpaid at termination or that BlackBerry willfully failed to pay her those wages. Consequently, her section 201 and 203 claims should be dismissed.

Plaintiff merely recites the elements of section 201 in her complaint, alleging that BlackBerry "terminated [her] employment on December 15, 2023, yet [it] failed to pay [her] all due wages after her termination." ¶ 136. But Plaintiff cannot state a claim for relief by relying on conclusory allegations that mirror the statutory language. *Iqbal*, 556 U.S. at 678. Plaintiff has provided "no factual allegations concerning 'when [s]he received h[er] final paycheck, its amount, and the amount [s]he purportedly should have received.'" *Jacobs v. Sustainability Partners LLC*, 2020 WL 5593200, at *12 (N.D. Cal. Sept. 18, 2020) (citation omitted) (dismissing claims under §§ 201 and 203). Nor has Plaintiff made any "allegations as to a specific time period or amalgamation of hours worked for which [she] was not paid." *Id.*

Moreover, although Plaintiff demands all wages available to her under section 203, she "fails to allege sufficient facts demonstrating that defendants acted willfully." *Id.* Indeed, Plaintiff does not even attempt to allege, in a conclusory fashion or otherwise, that BlackBerry willfully failed to pay whatever unspecified amount was due. Altogether, Plaintiff has "fail[ed] to allege specific facts showing a willful refusal to pay wages after Plaintiff's termination." *Perez v.*

Performance Food Grp., Inc., No. 15-cv-02390-HSG, 2016 WL 1161508, at *5 (N.D. Cal. Mar. 23, 2016); *see also Smith v. Level 3 Commc'ns Inc.*, No. C 14–05036 WHA, 2014 WL 7463803, at *3 (N.D. Cal. Dec. 30, 2014) ("To state a plausible claim under sections 201 and 203, a plaintiff must allege sufficient detail to plausibly show that the employer wilfully [sic] and intentionally withheld wages."). Plaintiffs' section 201 and 203 claims should be dismissed.

D. Plaintiff's References to Negligent Hiring Should Be Stricken, Along with References to "Harassment" and "Discrimination" in Her Failure-to-Prevent Claim.

Pursuant to Rule 12(f), the Court should strike the "negligent hiring" portion of Plaintiff's sixth cause of action for negligent hiring, firing, and retention, as well as the "harassment" and "discrimination" portions of Plaintiff's fourth cause of action for failure to prevent harassment and retaliation.

1. A Negligent Hiring Claim Is Time-Barred, So Allegations Related to Giamatteo's Hiring Should Be Stricken.

Plaintiff's sixth cause of action is a claim for negligent hiring, firing, and retention, but all allegations regarding the hiring aspect should be stricken because a negligent hiring action is plainly time-barred. Under California law, negligent hiring claims are subject to a two-year statute of limitations. *Freeney v. Bank of Am. Corp.*, No. CV 15-02376 MMM (PJWx), 2015 WL 12535021, at *36 (C.D. Cal. Nov. 19, 2015); *Huimin Song v. Cnty. of Santa Clara*, No. 5:11–CV–04450–EJD, 2013 WL 6225263, at *5 (N.D. Cal. Nov. 25, 2013) (dismissing a negligent hiring claim as barred by the two-year statute of limitations). According to the complaint, BlackBerry hired Giamatteo in October 2021 (¶ 24), more than two years before Plaintiff filed the present lawsuit in April 2024.

Under California law, the two-year statute of limitations for negligent hiring starts running when the cause of action is complete with all its elements. *See Lee v. Bank of Am., N.A.*, No. 21-cv-07231-JSC, 2022 WL 595877, at *3 (N.D. Cal. Feb. 28, 2022). The elements of a negligent hiring claim are that of simple negligence: that BlackBerry had a legal duty to use reasonable care in hiring Giamatteo; that it breached that duty; and that there was proximate or legal cause

between BlackBerry's breach and Plaintiff's alleged injury. *Phillips v. TLC Plumbing, Inc.*, 172 Cal. App. 4th 1133, 1139 (2009) (citation omitted).

According to the complaint, all of the elements of negligent hiring were satisfied in 2021, and thus the clock on Plaintiff's claim began running at that time. First, Plaintiff alleges that BlackBerry hired Giamatteo in October 2021 to be President of the Cyber business unit, at which time BlackBerry had a duty to use reasonable care. ¶ 24. Second, Plaintiff alleges that BlackBerry breached its duty of care in 2021 by negligently failing to investigate Giamatteo's background and failing to train him. ¶¶ 125, 129. Third, Plaintiff alleges she was injured in 2021 by BlackBerry's decision to hire Giamatteo because he allegedly started harassing her "[f]rom the beginning of when [he] became President of the Cyber B[usiness] U[nit]." ¶ 27. Accepting Plaintiff's allegations as true, any negligent hiring claim was completed with all of its elements—and hence the statute of limitations began running—in 2021. *See Daluise v. Mccauley*, No. 2:15-cv-02701-CAS-JEMx, 2015 WL 7573649, at *5 (C.D. Cal. Nov. 24, 2015) (claim for negligence accrues when a plaintiff has a reason to suspect a basis for her claim). The two-year limitations period for this claim expired in October 2023.

Because Plaintiff's claim for negligent hiring is time-barred, the Court should strike all references to alleged deficiencies in BlackBerry's hiring of Giamatteo, such as that BlackBerry did not investigate his background. Specifically, the following passages should be stricken from the complaint:

- The term "Hiring" in the caption to Plaintiff's sixth cause of action, which appears on page 24 of the complaint.
- "BLACKBERRY negligently failed to investigate the background of its employees." ¶ 128.
- The terms "investigated," "investigating," and "appointing" in paragraphs 129 and 131 of the complaint, in which Plaintiff alleges that BlackBerry negligently "*investigated*, *appointed*, retained, and supervised Giamatteo." ¶¶ 129–131 (emphasis added).

Striking these allegations will avoid costly discovery, including document production, interrogatories, and deposition testimony, about Giamatteo's hiring, all of which are needless and irrelevant because any negligent hiring claim is clearly time-barred.

2. Plaintiff Has Not Properly Pled Any Harassment or Discrimination, So Her Allegation that BlackBerry Failed to Prevent Harassment or Discrimination Should Be Stricken.

Plaintiff's fourth cause of action asserts a claim for failure to prevent harassment and retaliation, but the "harassment" portion must be stricken because Plaintiff has failed to plausibly plead that any harassment occurred. To establish a claim for failure to prevent harassment or retaliation, the plaintiff must first show that she was "subjected to discrimination, harassment or retaliation." *Lelaind v. City & Cnty. of San Francisco*, 576 F. Supp. 2d 1079, 1103 (N.D. Cal. 2008). As discussed *supra*, Plaintiff has failed to state a claim for sexual harassment under FEHA. Thus, her claim against BlackBerry for failure to prevent harassment necessarily fails as a matter of law, and the Court should strike all references to it in the complaint. *See Trujillo v. N. Cnty. Transit Dist.*, 63 Cal. App. 4th 280, 289 (1998) (holding that a plaintiff cannot recover on a failure to prevent harassment claim "where there has been a specific factual finding that no such discrimination or harassment actually occurred at the plaintiff's workplace").

Similarly, Plaintiff has failed to plead that she suffered any "discrimination" that BlackBerry could be liable for having failed to prevent. While Plaintiff does not caption her fourth cause of action as a claim for failure to prevent discrimination, she nonetheless makes numerous references to alleged discrimination in the paragraphs beneath the claim caption. *See* ¶ 104. Plaintiff's only discrimination-related claim against BlackBerry is a section 1197.5 claim for failure to pay equal wages. Because she has failed to plead sufficient facts to support that claim, as discussed *supra*, her references to BlackBerry's alleged failure to prevent discrimination should be stricken. *See Lewis v. ADP Tech. Servs., Inc.*, No. CV 23-2583-KK-PDx, 2024 WL 561861, at *5 (C.D. Cal. Jan. 30, 2024) (holding that Plaintiff could not sustain a failure to prevent discrimination claim where her underlying discrimination claims, including one for pay discrimination, failed).

Striking the terms "harassment" and "discrimination" from Plaintiff's fourth cause of action will also promote judicial economy and "have the effect of . . . streamlining the ultimate resolution of the action" by eliminating the need for discovery relating to those topics. *State ex rel. State Lands Comm'n v. United States*, 512 F. Supp. 36, 38 (N.D. Cal. 1981).

The following passages that reference BlackBerry's failure to prevent harassment or discrimination should be stricken from the Complaint:

- The term "Harassment" in the caption to Plaintiff's fourth cause of action, which appears on page 20 of the complaint.

- The following sentences, in full: "In violation of the FEHA, BLACKBERRY failed to take all reasonable steps necessary to prevent discrimination and harassment against its employees. In perpetrating the above-described conduct, BLACKBERRY engaged in a pattern, practice, policy, and custom of unlawful discrimination. Said conduct constituted a policy, practice, tradition, custom, and usage that denied PLAINTIFF protections of the FEHA. At all relevant time periods, BLACKBERRY established a policy, custom, practice, or usage within the organization that condoned, encouraged, tolerated, sanctioned, ratified, approved of, and/or acquiesced in unlawful harassment and discrimination towards its employees including, but not limited to, PLAINTIFF." ¶¶ 103–105.

- The following sentences, in full: "BLACKBERRY was put on notice that it might be committing harassment and discrimination in the workplace and/or was strictly liable for the discriminatory behaviors. Once BLACKBERRY was put on notice that it might be committing discrimination in the workplace, it was a reasonable step to conduct a thorough investigation into whether there was harassment and discrimination in the workplace. BLACKBERRY failed to take this reasonable step of conducting a thorough investigation into PLAINTIFF's complaint of harassment and retaliation in the workplace. BLACKBERRY knew, or reasonably should have known, that the failure to provide any or adequate education, training, and information as to their personnel policies and practices regarding harassment and discrimination would result in retaliation. Providing adequate education, training, and information as to their personnel policies and practices regarding harassment and discrimination was a reasonable step that BLACKBERRY could have taken, but did not take, to prevent harassment and discrimination in the workplace." ¶¶ 106–107.

- The following sentence, in full: "The failure of BLACKBERRY to take the above-mentioned reasonable steps to prevent harassment and discrimination constituted deliberate indifference to the rights of its employees including, but not limited to, those of PLAINTIFF." ¶ 108.

- The following sentence, in full: "The failure by BLACKBERRY to take all reasonable steps to prevent sexual harassment was a substantial factor in causing PLAINTIFF's harm, as described above." ¶ 114.

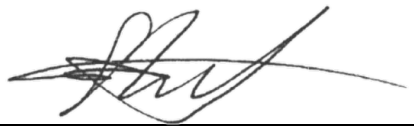
- The italicized words of the following sentences: "Those who terminated *and/or otherwise discriminated against* and failed to prevent *harassment, discrimination*, *and* retaliation against PLAINTIFF were officers, directors, and/or managing agents who were vested with discretionary authority to make decisions affecting company policy regarding significant aspects of the company's business. These officers, directors, and/or managing agents acted with malice in terminating *and/or otherwise discriminating against* PLAINTIFF and failing to prevent *harassment, discrimination, and* retaliation against her in that they did so *because of sexual harassment* despite knowing it was illegal to do so under the law, in conscious disregard of PLAINTIFF's rights. Those officers, directors, and/or managing agents who terminated *and/or otherwise discriminated against* PLAINTIFF acted with malice." ¶ 120.

V. CONCLUSION

For the above reasons, Defendants respectfully request that the Court (i) dismiss Plaintiff's claims for hostile work environment, discriminatory pay, and failure to pay wages; and (ii) strike Plaintiff's allegations regarding negligent hiring and failure to prevent harassment and discrimination.

DATED: June 3, 2024

MUNGER, TOLLES & OLSON LLP

By: 

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